United Nations S/2003/1204

Security Council

Distr.: General
26 December 2003

Original: English

Letter dated 19 December 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 October 2003 (S/2003/1004). The Counter-Terrorism Committee has received the attached fourth report from Australia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-67455 (E) 160104

Annex

Letter dated 18 December 2003 from the Permanent Representative of Australia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to present to you Australia's fourth report submitted pursuant to resolution 1373 (2001) (see enclosure).

(*Signed*) John **Dauth**

Enclosure

Fourth Report to the UN Counter-Terrorism Committee

Australia remains a strong supporter of international and domestic efforts to defeat terrorism. As noted in previous reports to the Committee, since the adoption of Resolution 1373, Australia has put in place extensive measures to prevent the financing of, preparations for and basing from Australia of terrorist attacks.

Australia has developed a highly coordinated domestic counter-terrorism response strategy incorporating law enforcement, security and defence agencies. The Government has introduced new legislation designed to strengthen Australian law enforcement to meet our obligations under the UN counter-terrorism treaties. These measures are in addition to extensive and effective legislation which was already in place before 2001.

Australia's obligation to freeze terrorist assets under Resolution 1373 is implemented domestically through Part 4 of the *Charter of the United Nations Act 1945* ("the Act") and through the Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002 ("the 2002 Regulations"). Australia has made it a criminal offence for persons who hold assets that are owned or controlled by persons or entities referred to in sub-paragraph 1(c) of Resolution 1373 to use or deal with those assets. These persons and entites referred to in Resolution 1373 are listed by the Minister for Foreign Affairs through the Regulations. It is also a criminal offence to make assets available to persons or entities referred to in sub-paragraph 1(c). The penalty for these offences is five years imprisonment.

Australia has pleasure in submitting its fourth report to the Counter-Terrorism Committee of the United Nations Security Council on measures taken by the Government of Australia to implement Security Council Resolution 1373 of 28 September 2001.

1.1 Question: Could Australia please inform the CTC whether lawyers, notaries and such other persons who deal in financial transactions are also obliged to report suspicious transactions?

Under domestic legislation in Australia, lawyers, notaries and other such persons are not currently obliged to report suspicious financial transactions. They are required to report "significant cash transactions" (that is, cash transactions involving A$10,000 or more).

Australia notes that while the Revised Financial Action Taskforce (FATF) 40 Recommendations require countries to oblige lawyers and notaries to report suspicious transactions, neither the previous FATF Recommendations, nor United Nations Security Council Resolution (UNSCR) 1373 specifically obliged lawyers and notaries to report suspicious transactions. Australia is in the process of implementing the Revised FATF 40 Recommendations.

1.2 Question: The effective implementation of sub-paragraph 1(d) requires States to have machinery to register, audit and monitor the collection and use of funds and other economic resources by charitable, religious, cultural and other associations with a view to ensuring that they

are not diverted from stated purposes, in particular to terrorism. Please inform the CTC of the legislative provisions and the enforcement machinery that Australia has in place in that regard.

As noted earlier, Australia has fully implemented UNSCR 1373 via Part 4 of the *Charter of the United Nations Act 1945*. Australia does not consider sub-paragraph 1(d) to be limited in application to just charitable, religious, cultural and other associations. This legislation creates criminal offences for any person (natural or legal persons) who deals in assets of persons or entities listed by the Minister for Foreign Affairs. Australia regularly updates the list of terrorists and terrorist organisations under Part 4 of the *Charter of the United Nations Act 1945* to ensure international consistency. Any amendments or updates to the list are notified to industry, and made public.

FATF Special Recommendation VIII on terrorist financing also requires countries to review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. In particular, it requires countries to ensure that non-profit organisations cannot be misused by terrorist organisations. Australia is in the process of considering how to implement Special Recommendation VIII domestically.

1.3 Question: As regards the implementation of sub-paragraphs 1(a), (c) and (d) could Australia please provide the CTC with the following information:

a) The number of reports of suspicious transactions (STR) received by AUSTRAC;

Australia notes that UNSCR 1373 does not specifically require lodging of suspicious transaction reports (STR). Australia's *Financial Transaction Reports Act 1988* requires 'cash dealers' to report suspicious transactions to AUSTRAC. It should be noted that 'case dealers' as defined by this legislation is a more limited class of persons than those covered by Part 4 of the *Charter of the UN Act 1945*.

Between 1 January 2002 and 7 November 2003, 135 reports of STRs were received by the Australian Transactions Reports and Analysis Centre (AUSTRAC). These reports were made by 'cash dealers' under the *Financial Transaction Reports Act 1988*, but relate to names that match or partially match listings by the Department of Foreign Affairs and Trade (DFAT) of terrorist individuals or entities pursuant to UNSCR 1373. A number of STRs have also been separately received by AUSTRAC where activity indicates possible links to terrorism, for example through a specific country of interest. These have been proactively disseminated by AUSTRAC to the Australian Federal Police (AFP).

b) The number of cases in which the STRs ended in prosecutions;

The *Financial Transaction Reports Act 1988* precludes suspicious transactions reports from being used as evidence in court proceedings. However, the reports are important and useful financial intelligence which enable law enforcement agencies to focus their further enquiries in a manner which can lead to the commencement of prosecutions and the obtaining of admissible evidence for use in the prosecution. Australia does not keep statistical records on the number of prosecutions that have been launched as a result of an investigation initiated by STRs.

c) The number of cases in which assets were frozen and the value of the assets frozen.

There have been two cases where assets have been frozen under the Regulations, for a total of $2196.99. In one of these cases, assets were subsequently unfrozen after it was established that the entity concerned had no terrorist connections.

1.4 Question: With the coming into force of the Suppression of the Financing of Terrorism Act 2002 and in particular its Sections 20 and 21, is Australia still in a position to freeze funds and assets held in Australia by non residents and suspected to be linked to terrorism at the request of another State as stated in Australia's report to the CTC, dated 24 June 2002 (at page 3).

Yes. The procedure provided for in the relevant Regulations – the *Charter of the United Nations (Terrorism and Dealing with Assets) Regulations 2002* – to identify the persons and entities (and assets), also allows persons or entities identified by other countries as supporters of terrorism to be subjected to the Regulations at the discretion of the Minister for Foreign Affairs. The coming into force of the *Suppression of the Financing of Terrorism Act 2002* provides for increased penalties for the holding or control of terrorist assets, and does not prevent the possibility that another State may request Australia to freeze funds and assets held by terrorist individuals and entities.

1.5 Question: Australia states in its third report that an organisation can be specified by regulation only if the Minister is satisfied on relevant grounds that the organisation is identified in, or pursuant to, a decision of the United Nations Security Council relating to terrorism and that the organisation is directly or indirectly engaged in preparing, planning, assisting in or fostering the commission of a terrorist act. Could Australia please clarify to the CTC whether this precludes the possibility of specifying an organisation as a terrorist organisation at the request of another State? Could Australia also please indicate how long it takes to declare an organisation a terrorist organisation?

Persons, organisations or entities identified by another State can be listed by the Minister for Foreign Affairs for the purpose of the terrorist financing legislation (Part 4 of the *Charter of the United Nations Act 1945*) with the result that any person dealing with assets of a listed person or entity commits a criminal offence (with a maximum penalty of 5 years imprisonment). This process can be done very quickly as the need arises, and Australia has responded to the requests of other States to listed persons and entities in the past.

Question 1.5 refers to the separate Australian legislation concerning proscription of terrorist organisations for the purpose of banning membership and other activities of that organisation under *the Criminal Code*, a matter unrelated to implementation of UNSCR 1373.

1.6 Question: At page 17 of its first report, Australia has stated that The Mutual Assistance in Criminal Matters Act 1987 restricts Australia's capacity to provide assistance if it relates to the prosecution or punishment of a person charged with, or convicted of, an offence in respect of which the death penalty may be imposed in a foreign country. In the context of implementing sub-

paragraphs 2(e) and 2(f) please inform the CTC of the action that is possible under Australian law in the case of a person whose extradition is sought for an offence that carries the death penalty.

Australia can only extradite a person to a requesting country when the requesting country is defined to be an extradition country under Australia's *Extradition Act 1988* and the offence relied upon is an extradition offence.

Section 22(3)(c) of the *Extradition Act 1988* prevents the surrender of a person where the extradition offence is punishable by the death penalty, unless the requesting state gives an undertaking that the person will not be tried for the offence or, if tried, that either the death penalty will not be imposed or, if imposed, will not be carried out.

1.7 Question: The CTC would be happy to know whether Australian laws dealing with terrorism provide for special courts, special conditions relating to the grant of bail to terrorists and their supporters and the use of undercover operations.

Australia's usual criminal justice system applies to terrorism offences.

1.8 Question: With reference to sub-paragraph 2(a) it is noted that Australia is a signatory to the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition. Could Australia please indicate to the CTC the steps it intends taking to ratify and implement the Protocol. In this context, what are the intentions of Australia as regards implementing the recommendations of the WCO concerning the above Protocol?

Australia is currently taking steps to ratify the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (the Firearms Protocol). As states and territories in the Australian Federal system control and regulate many aspects of firearms, their parts and ammunition, the Australian Federal Government is in the process of consulting with states and territories regarding implementation of the Protocol.

1.9 Question: The CTC would be pleased to have an outline of the Australian laws, rules or regulations relating to the transfer of sensitive technologies that could be misused by terrorists.

Australia controls the overseas export of military and specified dual-use technologies listed in the 'Defence and Strategic Goods List'. Australia's export controls are enabled under the *Customs Act of 1901* and executed through *Customs (Prohibited Exports) Regulation 13E.*

Australia also applies catch-all controls contained in the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995.* This Act and its derived Regulations provide controls for goods, technologies and services not regulated by the Customs Act, ie. not listed in the 'Defence and Strategic Goods List'. The Weapons of Mass Destruction (WMD) related controls regulate the export and transfer, both within and outside Australian territory, of otherwise uncontrolled technologies but only if there is suspicion that the export or transfer of these technologies may assist a WMD-related activity. The

WMD Act's jurisdiction extends to the transfer of intangibles and transfers via intangible means (for example, electronic, photonic).

The potential misuse of sensitive technologies by terrorists is not specifically evaluated in the assessment of export applications. Each export application is considered by relevant agencies on a case-by-case basis, taking into account the stated end-use and end-user. The processing of export applications, which are considered to be sensitive because of the stated end-use or end-user, includes a diversion risk assessment.

Australia is also a Participating State of the 'Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies'. In 2003, the Wassenaar Arrangement has considered the development of a 'Terrorist Goods List' to identify those dual-use technologies that could be misused by terrorists.

1.10 Question: The CTC would be interested to have the following information in the context of the effective implementation of the Resolution:

a) The number of arrests of terrorists and/or their supporters in the last two years;
b) The number of cases in which prosecution has been launched

There has been one terrorism-related arrest where prosecution has been launched.

This arrest and proposed prosecution is not for alleged offences under Part 4 of the *Charter of the United Nations Act 1945* but for other terrorist related offences.

1.11 Question: The CTC would be grateful to know the progress achieved by Australia in becoming a party to the Convention for the Marking of Plastic Explosives for the Purpose of Detection 1991.

Australia is currently considering its position in relation to becoming a signatory to the Convention for the Marking of Plastic Explosives for the Purpose of Detection 1991.

1.12 Question: The CTC would be grateful to know how Australia has implemented the General Annex to the revised WCO Kyoto Convention, as well as the Standards of the World Customs Organisation with a view to ensuring the security of the supply chain. Australia states in the first report that the Advance Passenger Processing System allows certain private sector organisations, such as airlines and shipping companies to provide information about persons intending to travel to Australia in advance of their arrival. Does Australia intend extending this cover to all arriving passengers, as well as cargo in order to enable authorities to screen for prohibited passengers and cargo? Does Australia propose making it obligatory for carriers operating from Australia to furnish such information to the States of destination?

Australia is well advanced in the implementation of key elements of the General Annex, and the Standards of the World Customs Organisation (WCO).

Australia is working towards achieving compliance of its reporting systems against the WCO data model. An enhanced cargo reporting system being introduced will require mandatory electronic pre-arrival reporting of import cargo. Export controls will also be substantially improved with electronic reporting of export consignments at the port gate as well as requiring consolidation of export consignments only at licensed premises.

The Australian Customs Service has formalised relationships with trading partners including through a number of Memoranda of Understanding (MOUs). An Accredited Client Program is being introduced for importers and exporters who can demonstrate they provide government with accurate and timely information and revenue payments.

Australia is also a leader in anti-corruption strategies and continues to contribute to regional capacity initiatives targeting customs administrations especially in the areas of integrity and risk management processes.

Other implemented and planned changes to improve supply chain security include: increased electronic reporting requirements for cargo; introduction of electronic signature technology for communications with business; enhanced border powers to enable the seizure of in-transit cargo; introduction of sea container x-ray facilities; and developing a Customs Cargo Security Strategy.

Australia's Advance Passenger Processing (APP) system is part of Australia's border management system. It is a passenger processing system and does not relate to cargo. It is currently madatory for all international passenger aircraft travelling to Australia to use the APP system to provide advance passenger information (API) on all passengers in advance of travel. By 1 January 2004, it will be mandatory for passenger aircraft to provide API data on aircrew using the APP system and for cruise ship operators to report both passengers and crew by APP. It is intended to extend APP to include the crew of cargo ships during the latter part of 2004.

Australia requires that all cargo, including in-transit and transhipment cargo, be reported to Australian Customs for screening and risk assessment. Under sea and air cargo reporting arrangements scheduled to come into effect in 2004 under the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, carriers will be required to report cargo electronically at least 24 hours before arrival for sea cargo and at least two hours prior to arrival for air cargo. Carriers will also be required to report the number of empty containers on the vessel.

1.13 Question: The CTC would be pleased to be provided with an outline of the relevant provisions of Australian law that deal with the granting of Australian citizenship to foreigners. Is a foreigner who is granted Australian citizenship allowed to change his or her name? What precautions are taken to establish the true identity of a person before new identity papers are issued?

The *Australian Citizenship Act 1948* (the Act) provides that, to be granted Australian citizenship, a person must:

- be a permanent resident;
- be 18 years or older;
- understand the nature of the application;
- have lived in Australia as a permanent resident for a total of 2 of the 5 years immediately before application, including a total of 1 year during the 2 years immediately before application;
- be of good character;
- be able to speak and understand basic English;
- understand the responsibilities and privileges of Australian citizenship; and
- intend to live in Australia or maintain a close and continuing association with Australia.

Under s15 of the Act, the final step in the acquisition of Australian citizenship by grant is the making of the Australian Citizenship Pledge.

Under s 14B of the Act, the Minister has the discretion to revoke the grant of a certificate of Australian citizenship prior to conferral, where the decision to grant the certificate was made on or after 1 July 2002. Revocation can be considered in the following circumstances:

- where, if the person were to make an application for grant of citizenship at the current time, they would not meet the requirements listed above; or
- where a person does not take the Australian Citizenship Pledge within 12 months of being granted a certificate of Australian citizenship without an acceptable reason.

A person may apply for Australian citizenship in a different name to the one that appears on their birth certificate or foreign passport. However, they are required to provide acceptable evidence of a formal name change such as:

- a Marriage Certificate;
- a Change of Name Certificate; or
- a Statutory Declaration made by the person together with evidence of common usage of the new name – for example a baptism certificate, Medicare card, taxation assessment notice, driver's licence or school enrolment.

Section 47 of the *Australian Citizenship Act 1948* provides a broad discretion to amend certificates of Australian citizenship if it is considered desirable to do so for any reason. As a matter of policy, amendments under section 47 are usually only made where it can be demonstrated that the information on the certificate is factually incorrect, such as where an error has been made by the issuing authority. Where a person has changed their name after the grant of Australian citizenship, policy guidelines do not permit amendment of the name shown on the certificate or the issue of a new certificate in a different name.

Australian citizenship certificates are not documents of identity. They are a record that a person of a certain name acquired Australian citizenship on a specific date. Prior to grant of Australian citizenship, several precautions are taken to establish the true identity of a person, namely;

- completion of an application for grant of Australian citizenship which requires information relating to the person's identity and the identity of close relatives. This information is then checked against existing Australian immigration records on the applicant;
- a mandatory face-to-face interview as part of the citizenship application process for all applicants over 16 years of age;
- citizenship applicants must have a person vouch for their identity by completing a Proof Of Identity (POI) declaration on the application form, which includes endorsing a passport size photo of the applicant as a true likeness of that person. The person completing the POI declaration must be an Australian citizen who is employed in one of a number of specified professional occupations and they must have known the applicant for at least 12 months; and
- provision by the applicant of original documentation including:
  - birth certificate;
  - passport or travel document with which the person arrived in Australia;
  - evidence of Australian permanent residence; and
  - evidence of all name changes.